

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

April 26, 2006 Session

**MARK WOOD v. U-HAUL CO. OF TENNESSEE**

**Appeal from the Circuit Court for Davidson County**

**No. 02C-568     Walter Kurtz, Judge**

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**No. M2005-00600-COA-R3-CV - Filed on October 27, 2006**

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This appeal involves a personal injury claim for a back injury that the Plaintiff claims occurred while he was helping a U-Haul employee install a trailer hitch on his vehicle. A jury found the Plaintiff 90% at fault and the Defendant 10% at fault. On appeal, the Plaintiff claims that the Defendant never presented the affirmative defense of comparative fault, that the trial court erred in limiting the testimony of his expert witness so as to exclude his theory that U-Haul was negligent by not posting signs in the hitch installation area warning customers against entering, and that there was no material evidence to support the jury's verdict. The judgment of the trial court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

JERRY SCOTT, SR. J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and FRANK G. CLEMENT, JR., J., joined.

Joe Bednarz, Jr., Nashville, Tennessee, for the appellant, Mark Wood.

William H. Poland, Clarksville, Tennessee, for the intervening appellant, Blue Cross Blue Shield of Tennessee.

L. Marshall Albritton, Nashville, Tennessee, for the appellee, U-Haul Co. of Tennessee.

**OPINION**

**I. Facts and Background**

On January 27, 1996, the Plaintiff, Mark Wood, injured his back while allegedly helping a U-haul mechanic install a trailer hitch on the Plaintiff's truck. The U-Haul mechanic was drilling holes in the truck on the passenger side by the tailpipe. The Plaintiff claims that the mechanic asked him to hold the tailpipe out of the way with a pair of bolt cutters.

The Plaintiff further claims that as the mechanic was drilling the holes, the drill snagged causing the truck to violently shake “like a wet dog” throwing him to the floor injuring his back. The U-Haul mechanic claims that the Plaintiff never helped him and that while he was drilling the holes, the Plaintiff just fell to the floor complaining of back pain for no apparent reason. After the alleged accident, the Plaintiff was taken to the hospital by ambulance and diagnosed with a herniated disc.

Over six years later, on June 11, 2002, the Plaintiff had a three-level fusion with instrumentation in his back. The Plaintiff claims that the alleged accident at U-Haul required the surgery. Conversely, the Defendant claims that the Plaintiff had a prior back injury that caused the need for surgery. Approximately 15 years prior to the alleged accident at U-Haul, the Plaintiff injured his back by physically trying to pick up a car. As a result of this injury, he had a lumbar laminectomy. The Defendant claims that due to this injury, the Plaintiff continues to have back problems, which contributed to his need for surgery on June 11, 2002. Additionally, the Defendant claims that eight months before the alleged accident at U-Haul, the Plaintiff was in an automobile accident and was diagnosed with a soft tissue strain of the spine with aggravation of his prior existing degenerative lumbar disc disease. Based on the facts presented, a jury found that Mark Wood was 90% at fault and that U-Haul was 10% at fault.

On appeal, the Plaintiff claims that the Defendant never presented the affirmative defense of comparative fault, that the trial court erred in limiting the testimony of his expert witness so as to exclude his theory that U-Haul was negligent by not posting signs warning customers against entering the hitch installation area, and that there was no material evidence to support the jury’s verdict.

The intervening Plaintiff, Blue Cross Blue Shield of Tennessee, adopted the positions of the Plaintiff but presented no additional issues or argument.

## **II. Whether the Defendant raised the affirmative defense of comparative fault.**

### **A. Standard of Review**

The first issue raised by the Plaintiff is whether the Defendant raised the affirmative defense of comparative fault. Rule 8.03 of the Tennessee Rules of Civil Procedure states that: “In pleading to a preceding pleading, a party shall set forth affirmatively facts in short and plain terms relied upon to constitute . . . comparative fault (including the identity or description of any other alleged tortfeasors) . . .” Tenn. R. Civ. P. 8.03.

### **B. Analysis**

The Defendant stated its answer that:

U-Haul affirmatively avers that the plaintiff's injuries, if any, were proximately caused or contributed to by the plaintiff's negligence in failing to look out for his own safety, such that this claim should be dismissed in its entirety, or **in the alternative, that the plaintiff's damages should be proportionately reduced pursuant to Tennessee law.**

(TR. Vol. I, p. 4) (emphasis added). The statement affirmatively sets forth allegations in short and plain terms which describe the concept of comparative fault. Therefore, the Defendant properly asserted the affirmative defense of comparative fault.

**III. Whether the trial court erred in limiting the testimony of the Plaintiff's expert witness so as to exclude his theory that U-Haul was negligent by not posting signs warning customers against entering the hitch installation area.**

**A. Standard of Review**

"Questions involving the qualifications, admissibility, relevancy and competency of expert testimony are matters left within the broad discretion of the trial court." *State v. Stevens*, 78 S.W.3d 817, 832 (Tenn. 2002). Accordingly, on appellate review, a trial court's ruling on relevancy will not be overturned absent an abuse of discretion. *State v. Ballard*, 855 S.W.2d 557, 562 (Tenn. 1993). "[A]n appellate court should find an abuse of discretion when it appears that the trial court applied an incorrect legal standard or reached a decision which is against logic or reasoning that cause an injustice to the party complaining." *State v. Shuck*, 953 S.W.2d 662, 669 (Tenn. 1997).

**B. Analysis**

The second issue raised by the Plaintiff on appeal is whether the trial court erred in limiting the testimony of his expert witness so as to exclude his theory that U-Haul was negligent by not posting signs warning customers against entering the hitch installation area. Rule 702 of the Tennessee Rules of Evidence addresses expert testimony and allows testimony by experts if the expert's "scientific, technical, or other specialized knowledge will substantially assist the trier of fact to understand the evidence or to determine a fact in issue." Tenn. R. Evid. 702.

The following is an excerpt from a jury out hearing, where the Court questioned the Plaintiff's expert about his testimony regarding U-Haul's negligence for not posting signs warning customers against entering the hitch installation area.

The Judge: Well, let me ask you about this - - your opinion about signage, "Authorized personnel or employees only." It's - - I mean, you may

ultimately be correct that they shouldn't have allowed the customer to do -  
- to work on the vehicle, but it strikes me that signage like that relates to  
trespassers. I mean, it's to warn away customers that may want to go out  
there without permission to see what's going on. Am I right or wrong?

The Witness: Right. That's to deter or prevent customers from entering  
that - - what they have determined is a restricted area because of potential  
hazards.

The Judge: But that's not the case here because Mr. Wood was invited by  
the mechanic out there, right?

The Witness: I didn't know that.

The Judge: But obviously you've also opined he should never have been  
allowed to assist in the actual work.

The Witness: Correct. And I think I had a stipulation in my deposition  
that if they were escorted into the garage for one reason or another to  
review the work that was done or if there was a change in the work they  
needed the customer to see, that I would understand that - - for the  
customer to be in the garage in that situation.

(TR. Vol. III, p. 162-164).

In concluding that the testimony on signage was not relevant, the Court stated:

[T]he real issue here, though, is not the signage. It's in no event should  
the customer ever be allowed to assist in the actual work being performed  
on the vehicle. So, I think - I'm going to sustain the objection about the  
signage, but I'm going to allow him to testify."

(TR. Vol. III, p. 177).

As quoted above, the Plaintiff's expert witness stated that "if they were escorted into the  
garage for one reason or another to review the work that was done or if there was a  
change in the work they needed the customer to see, that I would understand that - - for  
the customer to be in the garage in that situation." (TR. Vol. III, p. 163-164). Based on  
this statement, the expert's testimony about signs only pertains to unescorted customers.  
In this case, the Defendant's mechanic escorted the Plaintiff. Therefore, as the trial court  
concluded, the expert's testimony about signs is not relevant to the facts in this case.

As stated above, questions involving the relevancy of expert testimony are matters left  
within the broad discretion of the trial court. *State v. Stevens*, 78 S.W.3d at 832. On

appellate review, a trial court's ruling on relevancy will not be overturned absent an abuse of discretion. *State v. Ballard*, 855 S.W.2d at 562. "[A]n appellate court should find an abuse of discretion when it appears that the trial court applied an incorrect legal standard or reached a decision which is against logic or reasoning that cause an injustice to the party complaining." *State v. Shuck*, 953 S.W.2d at 669. Therefore, we conclude that the trial court did not abuse its discretion by logically finding that the expert's testimony about signs was not relevant to the facts in this case because the Plaintiff was escorted by a U-Haul mechanic and the expert's testimony about signs only pertained to unescorted customers.

#### **IV. Whether there is material evidence to support the jury's verdict.**

##### **A. Standard of Review**

Rule 13(d) of the Tennessee Rules of Appellate Procedure sets out the applicable standard of review and states that "[f]inding of fact by a jury in civil actions shall be set aside only if there is no material evidence to support the verdict." Tenn. R. App. P. 13(d). "When addressing whether there is material evidence to support a verdict, an appellate court shall: (1) take the strongest legitimate view of all the evidence in favor of the verdict; (2) assume the truth of all evidence that supports the verdict; (3) allow all reasonable inferences to sustain the verdict; and (4) discard all [countervailing] evidence." *Whaley v. Perkins*, 197 S.W.3d 665, 671 (Tenn. 2006) (citing *Crabtree Masonry Co. v. C & R Constr., Inc.*, 575 S.W.2d 4, 5 (Tenn. 1978)). "Appellate courts shall neither reweigh the evidence nor decide where the preponderance of the evidence lies. If the record contains 'any material evidence to support the verdict, [the jury's findings] must be affirmed; if it were otherwise, the parties would be deprived of their constitutional right to trial by jury.'" *Whaley v. Perkins*, 197 S.W.3d at 671 (citing *Crabtree Masonry Co. v. C & R Constr., Inc.*, 575 S.W.2d at 5).

##### **B. Analysis**

Applying the standard stated above, we conclude that there is material evidence to support the jury's verdict. The jury found the Plaintiff 90% at fault and the Defendant 10% at fault. The Defendant presented expert testimony by a Professor of Engineering at Vanderbilt University that the drill could not produce sufficient torque to move the truck. The Plaintiff had a lumbar laminectomy in 1980 and after an automobile accident nine months prior to the alleged accident at U-Haul, was diagnosed with a soft tissue strain of the spine with aggravation of his prior existing degenerative lumbar disc disease. Applying the standard of review stated above and based on all of the evidence, a jury could reasonably conclude that the Plaintiff was more at fault by helping install the hitch knowing that he had back problems that were recently aggravated by the automobile accident. Therefore, we conclude that there was material evidence to support the jury's verdict.

## **V. Conclusion**

For the reasons stated above, we conclude that the defendant raised the affirmative defense of comparative fault in its answer by setting forth factual allegations in short and plain terms relied upon to constitute fault by the Plaintiff to be compared to the fault of the defendant as alleged by the Plaintiff. We further conclude that the trial court did not abuse its discretion by logically finding that the Plaintiff's expert's proffered testimony regarding signage was not relevant to the facts in this case. Finally, we conclude that there was material evidence to support the jury's verdict.

Having affirmed the judgment of the trial court, which found that the Defendant was only 10% at fault, it is not necessary to address the issues raised by the appellee, U-Haul Co. of Tennessee.

The judgment of the trial court is affirmed with costs of this appeal assessed against the appellant, Mark Wood.

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JERRY SCOTT, SR. J.